

**BEFORE THE ILLINOIS COMMERCE COMMISSION**

**Docket No. 01-0662**

**Surrebuttal Testimony of Chris Nations  
On Behalf of Ameritech Illinois**

**Ameritech Illinois Exhibit 9.2**

**June 5, 2002**

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**Surrebuttal Testimony of Chris Nations**

**On behalf of Ameritech Illinois**

**I. INTRODUCTION AND PURPOSE OF SURREBUTTAL TESTIMONY**

**Q. Please state your name and your business address.**

A. My Name is Chris Nations. I Am Area Manager – Regulatory –Operator Services. My business address is One SBC Plaza, Room 3440.13, Dallas, Texas 75202.

**Q. Are you the same Chris Nations that previously filed testimony in this docket?**

A. Yes, I am.

**Q. What is the purpose of your Surrebuttal Testimony?**

A. The purpose of my testimony is to address issues raised by WorldCom witnesses Mr. Edward Caputo and Mr. Michael Lehmkuhl, who submitted testimony on May 20, 2002. This testimony will further illustrate Ameritech Illinois' compliance with Section 251(b)(3) of the Telecommunications Act of 1996 ("the Act")<sup>1</sup> and 271 Checklist Item No. (vii) pursuant to Section 271 (c)(2)(B)(vii)(II) & (III).

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<sup>1</sup> Section 251(b)(3), Communications Act of 1934 as amended by the Telecommunications Act of 1996.

21 **Q. Does your testimony take into account the impacts of the May 24, 2002,**  
22 **decision of the United States Court of Appeals for the District of Columbia**  
23 **Circuit in *United States Telecom Association, et al. v. FCC*, No. 00-1012, that**  
24 **remanded both the *UNE Remand Order* and the *Line Sharing Order* to the**  
25 **FCC for further consideration ("Decision")?**

26 A. No, it does not. The implications of the Decision are a legal matter and I  
27 understand that any discussion of those issues will take place in the briefs. My  
28 testimony continues to address FCC regulations as they existed before the  
29 Decision. Nothing in this testimony should be construed as taking any position  
30 on the impact of the Decision, or as a waiver of the Company's rights under the  
31 Decision.

32  
33 **Q. Can you please summarize the discussion of the OS/DA issue in the case?**

34 A. Yes. The ultimate issue is whether Ameritech Illinois meets its obligations under  
35 Section 251(b)(3) of the Act and 271 Checklist Item No. (vii) pursuant to 47  
36 C.F.R. § 271 (c)(2)(B)(vii)(II) & (III) by providing CLECs with  
37 nondiscriminatory access to the following services:<sup>2</sup>

38 1) Operator Services ("OS"), including adjunct Operator Call Completion  
39 Services;

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<sup>2</sup> FCC 96-333 *Second Report and Order and Memorandum Opinion And Order* ("Second Report and Order") and CC Docket 96-98, Appendix B - Rules, Amendments to the Code of Federal Regulations (C.F.R), Part 51, Subpart D ("the FCC Rules").

- 40           2) Directory Assistance (“DA”) Services, including Information Call Completion  
41           (“ICC”);  
42           3) Directory Assistance Listings (“DAL”) in bulk, with daily updates; and  
43           4) Direct Access to Ameritech Illinois’ DA database on a query-by-query basis.  
44

45           I do not believe that Mr. Lehmkuhl disputes the fact that Ameritech Illinois  
46           provides nondiscriminatory access to items 1, 2 and 4 (OS/DA services and direct  
47           access to Ameritech Illinois’ DA database on a query-by-query basis).

48           Moreover, I do not believe that Mr. Lehmkuhl disputes the fact that Ameritech  
49           Illinois provides item 3, DAL in bulk (i.e. downloads), with daily updates.

50           WorldCom currently receives DAL in bulk today. The issue of disagreement is  
51           whether Ameritech Illinois is obligated to provide names, addresses and  
52           telephone numbers (DAL), for WorldCom to incorporate into its DA database, as  
53           UNEs at TELRIC rates. I discuss this issue below. Regardless of WorldCom’s  
54           position, Ameritech Illinois does provide its DA listings as required by the Act.  
55

55    **II.     DIRECTORY ASSISTANCE LISTINGS, PROVIDED IN BULK, IS NOT**  
56           **AN UNBUNDLED NETWORK ELEMENT (“UNE”).**

57    **Q.     What argument does Mr. Lehmkuhl make to support his demand for DAL at**  
58           **TELRIC rates?**

59    A.     Mr. Lehmkuhl inaccurately argues that the FCC has ruled that DAL is a UNE. He  
60           also argues that failure to make DAL available would be discriminatory (lines 49-  
61           72) and would place WorldCom at a “disadvantage” (lines 189-206).

62

63    **Q.     How do you respond to these arguments?**

64    A.     First, Mr. Lehmkuhl is wrong when he claims that the FCC decided this issue in  
65           WorldCom’s favor. WorldCom’s claim that DAL should be a UNE was rejected  
66           by the FCC in 1999.<sup>3</sup> He cites paragraph 538 of the *First Report and Order*, but  
67           Mr. Lehmkuhl neglects to mention that *The First Report and Order* was  
68           superceded by the *Third Report and Order* (“*The UNE Remand Order*”). The  
69           *UNE Remand Order* expressly excludes from the unbundling requirement  
70           directory assistance listing updates in daily electronic batch files --i.e., DAL.

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<sup>3</sup> *UNE Remand Order*, ¶ 444 (“We decline to expand the definition of OS/DA, as proposed by some commenters, to include an affirmative obligation to rebrand OS/DA and to provide directory assistance listings updates in daily electronic batch files. We find such modifications unnecessary because, as mentioned above, these obligations already exist under section 251(b)(3), and the relevant rules promulgated thereunder.”).

71 Thus, the FCC has already excluded from the unbundling requirement the very  
72 thing that WorldCom is asking for in this proceeding.<sup>4</sup>

73 The FCC reasoned in its *UNE Remand Order* that the obligation to provide  
74 nondiscriminatory access to DAL already exists in Section 251(b)(3) of the 1996  
75 Act and, therefore, it declined to include DAL within the definition of OS/DA,  
76 which had previously been designated as UNEs.<sup>5</sup> Based on this FCC ruling,  
77 Ameritech Illinois is clearly not required to offer DAL as a UNE. In fact, as  
78 WorldCom concedes in its comments to the FCC in the Triennial Review (Docket  
79 No. 01-338, p. 128), filed April 4, 2002,<sup>6</sup> the *UNE Remand Order* did not  
80 designate DAL in bulk as a UNE. Further, WorldCom argued that DAL should  
81 be TELRIC priced in FCC docket 99-273 (*Directory Listing Information Order*).  
82 However the FCC declined to require DAL at TELRIC in that proceeding as  
83 well.<sup>7</sup>

84

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<sup>4</sup> The *UNE Remand Order* Executive Summary Sec. II provides further support for this position. There, the FCC said that “Incumbent LECs are not required to unbundle their OS/DA services pursuant to section 251(c)(3), except in the limited circumstance where an incumbent LEC does not provide customized routing..... Incumbent LECs, however, remain obligated under the nondiscrimination requirements of section 251(b)(3)... [to] *provide directory assistance listing updates in daily electronic batch files.*” (emphasis added).

<sup>5</sup> *UNE Remand Order*, ¶ 444. See also *supra*, footnote 4.

<sup>6</sup> See Comments of WorldCom Inc., filed April 4, 2002 in FCC Triennial Review, Docket No. 01-338, p.128.

<sup>7</sup> *FCC Provision of Directory Listing Information*, CC Docket No. 99-273, FCC 01-27, ¶ 7 (“On September 9, 1999, we released the SLI/DA Order and Notice resolving certain petitions for reconsideration of the *Local Competition Second Report and Order*. This order affirmed the Commission’s conclusion that section 251(b)(3) requires all LECs to provide competing providers of telephone exchange service and toll service with nondiscriminatory access to their directory assistance databases and revised the Commission’s rules to remove any ambiguity in this area.”).

85 **Q. Is there other evidence that indicates that the FCC has rejected Mr.**  
86 **Lehmkuhl's argument?**

87 A. Yes. As I stated in my Rebuttal Testimony at lines 37-39, the FCC has approved  
88 Southwestern Bell Telephone's 271 compliant "X2A" agreements for Arkansas,  
89 Kansas, Missouri, Oklahoma, and Texas where SWBT offers DAL at market-  
90 based, not UNE, prices. If, as Mr. Lehmkuhl contends, the FCC so clearly  
91 requires DAL as a UNE, it could not have found that Southwestern Bell  
92 Telephone was in compliance with Checklist Item No. (vii) and would not have  
93 approved those 271 applications.

94  
95 **Q. What about his argument that Texas, Michigan and Ohio have required**  
96 **ILECs to provide DAL as a UNE?**

97 Those decisions do not in any way illuminate the FCC requirements. They shed  
98 no light on what the FCC requirements are and should not be interpreted by this  
99 Commission to be authoritative rulings on the scope of the FCC requirements.<sup>8</sup>  
100 The FCC's decisions speak for themselves on this point – DAL is a requirement

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<sup>8</sup> See *FCC Provision of Directory Listing Information*, CC Docket No. 99-273, FCC 01-27 ¶ 7, ¶ 9 ("During the comment period in this proceeding, we released the *UNE Remand Order*, in which we relieved the ILECs of the obligation to offer DA as an unbundled network element because a competitive DA market was developing, and that lack of access to the incumbent LEC's directory assistance service as an unbundled network element did not materially diminish a requesting carrier's ability to offer telecommunications service...and reiterated that requesting carriers had to have the ability, under section 251(b)(3), to obtain nondiscriminatory access to competing DA providers."), ¶ 10 ("As we discuss above, the Commission has ruled – and subsequently clarified its rules to emphasize – that, under section 251(b)(3), LECs, including new entrants, must provide nondiscriminatory access to their directory assistance databases.").



of 251(b)(3) not a 251(c)(3) UNE requirement. It is also important to point out that the Ohio decision was based on paragraph 538 of the *First Report and Order*, which has been superceded by the *UNE Remand Order*. Moreover, the Ohio PUC also ruled that OS/DA services are not unbundled elements based on the clarification provided in the *UNE Remand Order* – a related ruling that WorldCom ignores.<sup>9</sup>

**Q. How do you respond to his remaining arguments on this issue?**

A. His final arguments are that failure to make DAL available would be discriminatory (lines 49-72) and would place WorldCom at a “disadvantage” (lines 189-206). Neither argument is sound. Ameritech Illinois does provide its DA listings (DAL bulk download) to WorldCom today. Mr. Lehmkuhl cites the FCC’s *Directory Listing Information Order*<sup>10</sup> (lines 96-99) to support the claim of potential discrimination. He fails to mention that this is not a UNE analysis and that the *Directory Listing Information Order* did not find that DAL is a UNE. WorldCom gets the DAL downloads from Ameritech Illinois today as required by

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<sup>9</sup> Ohio PUC Docket No. 01-1319-TP (“What has not been disputed in this Issue is Ameritech’s ability to provide customized routing of OS and DA traffic to FGC trunks. Because of Ameritech’s current offering of customized routing via FGC and its willingness to look into the feasibility of offering customized routing via FGD trunks in Ameritech Ohio’s service territory (see Issues 59, 129, 212 and 213), the Panel agrees that Ameritech meets the FCC requirement of offering customized routing of OS and DA and should not have to provide OS and DA as a UNE.”).

<sup>10</sup> See *FCC Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 01-27 (rel. Jan. 23, 2001). This Order became effective February 21, 2001.

117 251(b)(3) and 271 Checklist Item No. (vii). Thus, there can no longer be any  
118 claim of discrimination related to Ameritech Illinois' DAL.

119

120 **Q. Is there any “disadvantage” to WorldCom in buying the DAL at market –**  
121 **based rates rather than UNE rates?**

122 A. No. WorldCom is apparently able to charge retail rates for its directory assistance  
123 services that are well above the market-based rates that Ameritech Illinois offers<sup>11</sup>  
124 to WorldCom for DA listings in bulk to use in WorldCom's DA service. For  
125 example, a recent article in the Wall Street Journal reported that WorldCom's  
126 retail rates for certain directory assistance calls was as high as \$2.49 per listing.<sup>12</sup>

127

128 **Q. Mr. Lehmkuhl compares DAL in bulk to access to the CNAM database (lines**  
129 **50-73). Are these services comparable?**

130 A. No. The CNAM database is a call-related database and was recognized as such  
131 by the FCC. DAL is not a call-related database since it's not used to complete a  
132 call, bill, collect, or route a telecommunications service. DA listings are simply  
133 aggregations of names, addresses, and telephone numbers and have not been

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<sup>11</sup> See Appendices DAL and Pricing of the Level 3 Interconnection Agreement. Ameritech Illinois offers initial download of DAL at 4 cents per listing and 6 cents per listing for updates.

<sup>12</sup> *The Wall Street Journal* via Dow Jones, “Pass the Pain: WorldCom raises MCI fees”, S.Young 5/2/02.

134 recognized as call-related database by the FCC<sup>13</sup>. DAL is provided in bulk, and is  
135 available through electronic downloads via Network Data Mover (“NDM”) or  
136 provided via magnetic tape. WorldCom incorporates those names, addresses,  
137 and telephone numbers into WorldCom’s own DA database; WorldCom does not  
138 access Ameritech Illinois’ DA database.

139  
140 **III. AMERITECH ILLINOIS’ OBLIGATIONS UNDER SECTION 251(B)(3)**  
141 **OF THE ACT.**

142 **Q. Mr. Caputo states in his Rebuttal Testimony that Ameritech Illinois fails to**  
143 **recognize its obligation to offer OS and DA as UNEs, at least until the ICC**  
144 **finds that it can offer customized routing. (WorldCom Ex. 5.1, lines 74-82;**  
145 **166-188). Can you please respond?**

146 **A.** Mr. Caputo must have missed lines 164 through 171 of my Rebuttal Testimony,  
147 where I explicitly answer his question. It is unequivocally true that Ameritech  
148 Illinois continues to offer OS and DA services as UNEs -- and at TELRIC rates --  
149 in its tariff, Ill. C. C. Tariff No. 20, Part 19, Sections 7 and 8. Mr Caputo should  
150 not be confused about this point, because WorldCom purchases OS and DA  
151 services from that tariff at TELRIC rates. Regardless of the outcome of the  
152 pricing debate, the fact remains that Ameritech Illinois provides its OS/DA  
153

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<sup>13</sup> See the Ordering Clauses of the *UNE Remand Order*, Appendix C, Sec. 51.317 (2) Call-Related Databases, p. 8 – DAL is not included in the definition of a call-related database.

154 services on a nondiscriminatory basis in compliance with section 251(b)(3) and  
155 Checklist Item No. (vii) pursuant to Section 271 (c)(2)(B)(vii)(II)&(III).

156

157 **Q. Are the obligations under Sections 251(b)(3) and 251(c)(3) of the Act similar**  
158 **as Mr. Lehmkuhl states in (lines 79-81) of his testimony?**

159 A. No. The obligations found under these two sections are distinctly different.<sup>14</sup> The  
160 nondiscriminatory access and dialing parity obligation found under Section  
161 251(b)(3), which applies to all LECs, was deemed sufficient by the FCC in the  
162 *UNE Remand Order* for the provisioning of OS/DA services and DAL. The FCC  
163 also found that, based on the competitive marketplace, market-based rates should  
164 apply to these services instead of cost-based rates.<sup>15</sup> The UNE obligations of  
165 Section 251(c)(3), however, apply only to the incumbent LECs and require cost-  
166 based pricing for network elements that are only available through the incumbent  
167 LEC. As clarified by the FCC and referenced in my previous testimony, there are

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<sup>14</sup> Section 251(b)(3) of the Act establishes the following obligation: "The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays."

Section 251(c)(3) establishes the following obligation:" The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of the section provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

<sup>15</sup> *UNE Remand Order*, ¶ 447. See also, *FCC Directory Listing Order*, ¶ 9 ("[w]e released the *UNE Remand Order*, in which we relieved the ILECs of the obligation to offer DA as an unbundled network element ...").

168 numerous alternatives for OS/DA services and DAL provided in bulk by sources  
169 other than the ILEC.<sup>16</sup>

170

171 **Q. Does Ameritech have a competitive advantage with respect to DAL in**  
172 **Illinois?**

173 A. No. As stated in my Rebuttal Testimony (lines 76-97), there is wholesale  
174 competition in Illinois for DA services, and many of those competitors use  
175 Ameritech Illinois listings. CLECs and third-party OS/DA providers can, and do,  
176 purchase downloads of DAL from Ameritech Illinois, so each competitor has the  
177 same listing information – and the same daily updates -- as Ameritech Illinois.  
178 Further, WorldCom's argument that cost-based pricing is essential to counteract  
179 an alleged lack of competition does not hold water. As I mentioned above,  
180 WorldCom's rates for directory assistance services appear to be substantially  
181 above the low market-based rates it pays to Ameritech Illinois for the listing  
182 information.<sup>17</sup>

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<sup>16</sup> *UNE Remand Order*, ¶¶ 447, 448; Nations Rebuttal, Lines 82-106, filed 4/22/02.

<sup>17</sup> See Appendices DAL and Pricing of the Level 3 Interconnection Agreement. Ameritech Illinois offers initial download of DAL at 4 cents per listing and 6 cents per listing for updates.

183 **IV. DAL QUALITY ISSUES.**

184 **Q. Has Ameritech addressed the DAL quality issues that WorldCom addresses**  
185 **in this proceeding?**

186 A. Yes. Mr. Lehmkuhl appears to acknowledge at lines 215-224 of his Rebuttal  
187 Testimony that one quality issue he raised (“unmatched deletes”) was largely due  
188 to WorldCom’s own conduct and that the other alleged quality issue (“listing  
189 fluctuations”) is not a problem in Illinois for WorldCom.

190

191 **Q. Has WorldCom experienced “listing fluctuations” in DAL data in Illinois?**

192 A. No. WorldCom has not mentioned specific references to fluctuations in Illinois  
193 DAL data. In fact, Mr. Lehmkuhl stated in his Direct Testimony (lines 253-254)  
194 that he was not sure that this issue existed in Illinois. Mr. Lehmkuhl’s comments  
195 have been addressed and refuted in other states and are not applicable to this  
196 proceeding. WorldCom was informed that one reason for what WorldCom terms  
197 as “fluctuations” was due to the influx of the independent LECs’ listings into the  
198 DAL feed that were included with Ameritech Illinois’ listings in early 2001.  
199 Prior to this, the independent LECs had not given Ameritech Illinois authorization  
200 to include these listings in with Ameritech Illinois’ DAL downloads and updates.  
201 As stated in my Rebuttal Testimony (lines 140-155), further increases in the  
202 numbers of listing updates normally occur immediately prior to White Page  
203 (“WP”) directory “close dates”. For instance, prior to the Chicago WP directory

204 being finalized, residents and businesses request listing changes for the new book.  
205 Those changes flow down to update the DA database and DAL.  
206

207 **Q. Is Ameritech Illinois continuing to monitor the quality of its DAL product?**

208 A. Yes. Ameritech Illinois strives for 100% accuracy within its DA database and, in  
209 turn, the DAL data that WorldCom receives from Ameritech Illinois. Ameritech  
210 Illinois provides WorldCom bulk downloads of DAL information from the same  
211 database in which Ameritech Illinois retrieves its own data. Ameritech Illinois  
212 currently provides updates, upgrades, and any changes to its DA database to  
213 WorldCom on the same basis as it provides itself. Ameritech Illinois complies  
214 with the requirements of the Act and provides nondiscriminatory access to its DA  
215 listings.  
216

217 **Q. Does this conclude your testimony?**

218 A. Yes. However if new issues arise, I respectfully request the opportunity to  
219 supplement this testimony.